IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 396 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

GULZARSINGH - RETIRED CHIEF ENGINEER C.P.W.D.

Appearance:

1. Special Civil Application No. 396 of 2004

MR RK MISHRA for Petitioner No. 1

MR BS BRAHMBHATT for Respondent No. 1

MR CJ VIN for Respondent No. 1,2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 07/10/2004

ORAL JUDGEMENT

1. In this petition, the petitioner has prayed that the Court be pleased to hold and declare that the respondent no.1 is not authorised to enter into adjudication of arbitration proceedings between the

petitioner and the respondent no.2-Company and his appointment (that of respondent no.1) is against the provisions of Section 11 of the Arbitration and Conciliation Act, 1996, as also, Clause 14 of the Arbitration Agreement between the parties, and has further prayed that the respondent no.1 be permanently restrained from proceeding with the arbitration proceedings till the High Court passes order in Arbitration Petition no.14 of 2003. By way of interim relief, it is also prayed that, the arbitration proceedings before the respondent no.1 be stayed till appropriate orders are passed in the Arbitration Petition no.44 of 2003.

2. The petitioner has in his petition questioned the appointment of the respondent no.1 as an arbitrator between the petitioner-Company and the respondent no.2-Company on several grounds including the ground that the appointment of the arbitrator is in violation of provisions of Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as" the said Act") and Clause 14 of the Arbitration agreement between the parties. In view of the ultimate directions which are being given in this order, it is not necessary for me to outline all the grievances of the petitioner against the appointment of the arbitrator. Suffice it to say that, the petitioner had serious misgiving about the respondent no.1 being appointed and continued as an arbitrator to hold the proceedings between the petitioner and the respondent no.2. The petitioner has contended that the respondent no.2 appointed the respondent no.1 as an arbitrator in breach of the mandatory requirements under the said Act and the arbitration agreement between the parties. The petitioner has also moved Arbitration Application no.44 of 2003 before this Court and prayed for appointment of an appropriate person preferably a retired High Court Judge as sole arbitrator to arbitrate and adjudicate the dispute between the parties. The learned Counsel for the petitioner points out that by letter dated 30th June, 2003 written by the petitioner to the respondent no.1, the petitioner had specifically contended before the respondent no.1 that his appointment as an arbitrator is illegal, premature and without consent. It was pointed out that, as per the provisions of the said Act, period of thirty days is available to the parties for agreeing upon the name of the arbitrator, and before the said period was over, the respondent no.1 was appointed as an arbitrator. The petitioner had, therefore, stated that the appointment of the respondent no.1 as an arbitrator is illegal and without following the procedure laid down under Section 11 of the said Act,

and if in spite of this, he proceeds further, the proceedings will be null and void. The petitioner had also stated that the petitioner does not accept him as an arbitrator, and that, therefore, he should not in any manner enter into proceedings, and if any order is passed, the same will be null and void and is expecting that in view of the provisions of the law, the respondent no.1 will refrain from proceeding further in the matter. The learned Counsel for the petitioner, however, points out that despite this letter dated 30th June, 2003, the respondent no.1 wished to proceed further with the arbitration proceedings, and the petitioner was, therefore, compelled to move the present petition.

3. The respondent no.2 has filed detailed affidavit-in-reply and controverted the averments made by the petitioner. The Counsel for the respondent no.2 submits that the appointment of the respondent no.1 as an arbitrator was just and proper and after following all legal requirements. He specifically contends that the present petition is not maintainable under Article 226 of the Constitution of India. The learned Counsel appearing for the respondent no.1 does not dispute having received the letter dated 30th June, 2003 by the respondent no.1 but submits that since no specific challenge was made to the jurisdiction of the arbitrator, the respondent no.1 was not unjustified in proceeding further with the arbitration.

4. From the recording of the averments and submissions hereinabove, it can be seen that the petitioner has serious dispute about appointment of the respondent no.1 as an arbitrator and by letter dated 30th June, 2003 his objections have already been placed before the respondent no.1. The respondent no.1, therefore, should have addressed all these questions before proceeding further with the arbitration proceedings. This would otherwise also have been in consonance with the provisions of Section 16 of the said Act.

5. In view of the above background, without expressing any opinion about the rival contentions, and at the concession of the learned Counsel for the respondent no.2, without deciding the question of maintainability of the present petition, I am of the opinion, that the ends of justice would be met if certain directions are issued against the respondent no.1 so as to bring an end to the dispute atleast in so far as the present petition is concerned. As noted above, the petitioner has already objected to the respondent no.1 acting as an arbitrator by his letter dated 30th June,

2003. However, it will be open for the petitioner to move an appropriate application objecting to the jurisdiction of the respondent no.1 to act as an arbitrator, with a copy to the respondent no.2 who shall have an opportunity to file his counter to the same. This exercise shall be completed within a period of 15 days from today. The respondent no.1 upon receipt of such an application shall first proceed to decide the same after hearing both the sides before undertaking any further arbitration proceedings. The respondent no.1 shall dispose of the application of the petitioner by a speaking order, and communicate his decision to both sides. Eventually, when such an application is decided by the respondent no.1, he shall not hold any arbitration proceedings for a period of fifteen days after the communication of the decision as mentioned above.

6. With the result, the petition is disposed of in view of the above directions. Rule is made absolute to the above extent. No orders as to costs.

(Akil Kureshi,J.)